

Indiana INVESTIGATES

A MAGAZINE FOR INDIANA AUDITORS AND INVESTIGATORS

VOLUME 3, ISSUE 2

AUGUST 2008

PUBLISHED BY:

OFFICE OF INSPECTOR GENERAL

Next Meeting:

Thursday, August 28, 2008

9:00AM, IGCS Conference Room B

Inside:

What Can the Prosecution Assistance Unit
Do for You?

by Chris Naylor, Indiana Securities Commissioner

WHAT CAN THE PROSECUTION ASSISTANCE UNIT DO FOR YOU?

BY CHRIS NAYLOR, INDIANA SECURITIES COMMISSIONER
OFFICE OF SECRETARY OF STATE

Picture this: you've just received your first (or 10th) white collar criminal investigation. The suspect has swindled dozens of people out of millions of dollars. You know there are many steps you should be taking, but you're just not sure what they are or how to get started. Should you request bank records? Should you conduct witness interviews? What questions should you even ask? Is there a background check that can be done? Are there any victims in other states? You find yourself wishing there was someone you could call for guidance. You know you could put together a great case if you could just call someone and ask a few questions.

Guess what? You're in luck! The Indiana Secretary of State's Prosecution Assistance Unit ("PAU") can come to your aid. Its investigators and attorney have many years of experience in investigating and prosecuting securities fraud and mortgage broker fraud cases. Their role is to assist other investigators and prosecutors with criminal cases in these areas.

About the Prosecution Assistance Unit

In 2004, Indiana Secretary of State Todd Rokita created the PAU within the Securities Division of the Secretary of State's Office. Its sole purpose is to assist police and prosecutors in investigating and prosecuting criminal violations of the Indiana Securities Act and the Indiana Loan Broker Act. The PAU team collectively has over 72 years of experience in investigating and prosecuting criminals. Since its inception, the PAU has helped to convict 38 criminals in state and federal courts across Indiana. In addition, courts have ordered defendants to pay over \$29 million in restitution to crime victims.

The PAU attorney prepares all necessary documents, and then meets with the local prosecutor to determine whether or not to file charges. If the local prosecutor decides to file charges, the PAU attorney will then provide assistance to the local prosecutor until the close of the case, including direct participation in any eventual trial.

Types of Fraud Schemes

There are several forms that financial fraud can take. These include:

- *Ponzi schemes*: Named after Charles Ponzi, a Ponzi scheme promises high returns to investors and uses money from new investors to pay previous investors.
- *Affinity fraud*: In this scheme, a defendant uses a victim's religious affiliation or ethnic background to gain a person's trust, and then convinces that person to invest money with him or her.
- *Nigerian letters/emails*: The perpetrator sends an email or letter to a target claiming, for example, to be the widow of a slain Nigerian official, and asks to deposit a large sum of money in the victim's bank account to hide it from the Nigerian government. In exchange, the alleged Nigerian widow promises to pay a fee to the victim at some point in the future. The unsuspecting victim provides bank information for the promised wire transfer and the perpetrator uses the information to drain the victim's bank account.
- *Promissory notes*: Often used in conjunction with a Ponzi scheme, a promissory note is a loan contract between a lender and a borrower. The note should outline the amount of money the victim is loaning to the suspect, in exchange for a promised return on investment at the end of the term of the note. Another common factor in Ponzi schemes involving promissory notes is that defendants will often convince the investor to roll over his investment when the note comes due, in exchange for an even higher rate of interest. The defendant will sometimes pay the victim his promised interest at the end of the note's term, but will then convince the victim to re-invest the principal and issue another note.

Securities Crimes

There are three main securities offenses the PAU investigates:

- *Failure to Register as a Broker-Dealer, Agent, Investment Advisor, or Investment Advisor Representative*: "It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this article as a broker-dealer...." I.C. 23-19-4-1
- *Failure to Register Security*: "It is unlawful for a person to offer or sell a security in this State unless...the

security is registered under this chapter.” I.C. 23-19-3-1

- *Fraudulent or Deceitful Acts in Connection with the Sale of a Security*: “It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.” I.C. 23-19-5-1.



All of the above offenses are class C felonies, punishable by up to eight years in prison. When an individual commits securities fraud, neither he nor the security is typically registered with the Securities Division. Therefore, each episode of criminal behavior can usually support three class C felony charges.

If you would like to verify whether or not a broker-dealer, agent, investment advisor, investment advisor representative, or security is registered with the Securities Division, you may call the Securities Division at 317-232-6681, or visit the Division's website at: www.in.gov/sos/securities.

Loan Brokers

Loan broker fraud and failure to register as a loan broker are both class C felonies. In addition, a loan broker cannot “collect or solicit any consideration...in connection with a loan until the loan has been closed.” I.C. 23-2-5-20.

There are several factors that might point to mortgage fraud:

- *Shifting the closing date*: Homebuyers can find themselves in a default situation if they quit paying on their existing mortgage in anticipation of a quick closing on their new loan.
- *Offering a free refinance*: Every real estate closing has costs associated with it.
- *Total reliance on the loan broker*: The borrower should know the lender the broker is using and receive a copy of the rate lock in writing.
- *Use of the terms “pre-approved” or “pre-qualified”*: These are marketing plays.
- *Offer for a free real estate appraisal*: Typically, the borrower pays for an unbiased appraisal as part of the loan process.
- *Equity stripping*: Unscrupulous loan brokers may convince the borrower to continually refinance, to receive a new commission each time the customer closes a loan.
- *Over-appraised residential real estate*: The appraiser and broker collude to inflate the appraised value in order to borrow more money.
- *Post-closing fees*: Any broker who tries to collect additional fees from a borrower after closing is acting illegally.

The next time you find yourself wishing you could have another partner on a white-collar criminal matter, the PAU can help. For more information, contact the members of the PAU: Kimberly Haskins, Investigator; Charles Williams, Investigator; or Stephanie Caraway, Attorney. They can be reached at 317-232-6681; or by email at khaskins@sos.in.gov, cwilliams@sos.in.gov, or sscaraway@sos.in.gov.